

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

LARRY DONALD HAYDEN,

Plaintiff

V.

NO. 1:94CV256-S-D

THOMAS G. WALLACE, ET AL,

Defendants

O P I N I O N

This pro se complaint is before the court, sua sponte, for consideration of dismissal of the cause. The plaintiff was arrested on June 23, 1993, on a warrant issued by defendant Wallace on a charge of uttering a forged instrument. Defendant Judge Wallace set bail at \$60,000.00. On July 2, 1993, plaintiff made bail and was released. However, shortly thereafter, another forgery charge arose and plaintiff was rearrested and bond was set at \$110,000.

On July 27, 1993, plaintiff appeared before defendant Judge Howard for a preliminary hearing. He was bound over to the grand jury and bond was set at \$210,000.00.

On December 21, 1993, plaintiff was released from confinement. He was later charged, indicted, and pled guilty to federal charges in this court for offenses that were apparently the same ones that the state had originally been holding him on.

Plaintiff seeks damages against each defendant judge in the amount that they set his bond at, plus \$100.00 a day for the period he was incarcerated in the Lowndes County Jail. He also requests the "Lowndes County Jail to pay a \$100.00 a day for every day that they held my person."

Judicial officers are entitled to absolute immunity from claims for damages arising out of acts performed in the exercise of their judicial functions. Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). The alleged magnitude of the judge's errors or the mendacity of his acts is irrelevant. Young v. Biggers, 938 F.2d 565, 569 n.5 (5th Cir. 1991). Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction. Mirales v. Waco, 112 S.Ct. 286, 288 (1991).

Plaintiff does not complain of any actions taken by either judge defendant that were nonjudicial in nature. Therefore, his claims against them will be dismissed with prejudice as frivolous.

Section 1983 provides that any "person" acting "under color of state law in violating another's federal constitutional rights is liable to the injured party. Will v. Michigan Department of State Police, 109 S.Ct. 2304 (1989). The Lowndes County Jail is clearly not a "person". Even if by some measurement it would somehow be

considered a person, it would have been acting in its official capacity and would be immune within meaning of Section 1983. Consequently the claim against the Lowndes County Jail shall also be dismissed with prejudice as frivolous.

A final judgment in accordance with this opinion will be entered.

THIS the _____ day of _____, 1993.

CHIEF JUDGE